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(3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR

Second Appeal No. 448 Of 2005 Single Bench

APPELLANT:
PLAINTIFF

Dhansingh S/o Choudhary Panika aged about 70 Years, R/o Village Daldali , Thana Borla Tahsil and District Kawardha (CG).

P.R. No. 29-75/05 Bamhnitara
Presented by Shri Rahul
dated 19/9/05

V E R S U S

RESPONDENTS :
DEFENDANTS

1. Dharam S/o Maru Gaur aged about 50 years.
2. Kabara @ Moti S/o Dhara Gaur, aged about 30 years.

Both are resident of Village Bamhantara, P.S. Borla, Tahsil Kawardha District ~~Rajnandgaon~~ (CG).

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3. State of Chhattisgarh, Through Collector ~~Rajnandgaon~~ Kawardha District ~~Rajnandgaon~~ Kawardha (C.G.)

MEMORANDUM OF SECOND APPEAL UNDER SECTION 100 OF THE CODE OF CIVIL PROCEDURE 1908

(18)

HIGH COURT OF CHHATTISGARH AT BILASPUR

SECOND APPEAL NO. 448 of 2005

Appellant/ Plaintiff : **Dhansingh**

VERSUS

Respondents/ Defendants :

1. **Dharam**
2. **Kabara @ Moti**
3. **State of Chhattisgarh**

Smt. Renu Kochar, learned counsel for the appellant.

JUDGMENT

(Passed on २१.12.2005)

DHIRNDRA MISHRA, J

This is the plaintiff's second civil appeal as the suit for perpetual injunction was dismissed by the trial Court and the appeal preferred by the plaintiff was also dismissed by the learned lower appellate Court by the impugned judgment and decree. (Parties hereinafter shall be described as per their description before the trial Court.)

2. The case of the plaintiff before the trial Court was that the plaintiff is the owner of the suit land and he was in possession of the same, however, the defendants 1 and 2 forcibly entered into the suit land on 23rd November 1997 and harvested the crops grown by him and therefore, the above suit was filed.

3. Defendant No. 3 did not file written statement whereas defendants No. 1 and 2 in their written statement denied the ownership of the plaintiff over the suit land and submitted that in fact the defendants have been in possession of the suit property for the last 60-70 years since the lifetime of their father. They denied the allegation that they forcibly harvested the crops of the plaintiff and further pleaded that in fact the plaintiff had done *mar-peet* on 23.11.1997 and the defendants reported the matter to the police and a case was registered against the plaintiff. It is also submitted that the plaintiff is trying to dispossess the defendants on

the strength of forged and fabricated documents which he has obtained clandestinely in a revenue case. The defendants also preferred a counter-claim and prayed for declaration that they are the owners of the suit property.

4. On the basis of the pleadings of the respective parties, learned trial Court framed several issues and dismissed the suit of the plaintiff as well as the counter-claim of the defendants by recording a finding that the plaintiff has failed to prove that the defendants resorted to illegal interference over the suit property and that the plaintiff was also not entitled for perpetual injunction against the defendants. The counter-claim preferred by the defendants was also rejected on the ground that the defendants have failed to establish that any *patta* was issued to them or that they were in possession of the suit property for the last 60-70 years since the lifetime of their father or that the defendants were the owners of the suit property.

5. The appeal preferred by the plaintiff has also been dismissed by the impugned judgment and decree and the findings of the trial Court were affirmed.

6. Learned counsel for the appellant submits that that both the Courts have ignored the documentary evidence of Ex.P/1 and P/2 filed by the plaintiff wherein it is recorded that the plaintiff was in possession of the suit property in the year 1996-97 and therefore, the Courts below ought to have drawn a presumption in favour of the plaintiff that he is the owner of the suit property and was in possession of the same from the year 1952. However, the above documents have been brushed aside by the learned trial Court on the ground that the above documents are not certified and the same have not been proved by the author of the documents i.e. Patwari who had given that documents for producing it before the police. She further submits that since the patwari has not been examined, it should be presumed that the plaintiff was in possession of the suit property since long. This evidence has also been disregarded only on the ground that the plaintiff has not pleaded that he was in possession of the suit property since 1952.

7. Learned counsel for the appellant further argues that the lower appellate Court without dealing with the evidence available on record has mechanically affirmed the findings of the trial Court and therefore, the substantial question of law involved for adjudication of this appeal is that "whether the Courts below were justified in not drawing presumption on the basis of documents of Ex.P/1 and P/2 which shows that the plaintiff had acquired title on the ground of long and continuous possession?"

8. I have heard learned counsel for the appellant.

9. Both the Courts below have arrived at the conclusion that the plaintiff has failed to prove that he is the owner of the land in question or he was in possession of the same on the basis of some valid title as no document was filed by the plaintiff in this regard. Since the plaintiff has failed to prove the possession over the suit property, therefore he is not entitled for perpetual injunction as claimed. The above findings are based on oral and documentary evidence available on record. The trial Court has minutely dealt with the oral and documentary evidence on record and the above finding of the trial Court which has been subsequently affirmed by the learned lower appellate Court, is based on proper and detailed appreciation of the evidence available on record.

10. Thus in view of the aforesaid discussion, the impugned judgment and decree does not suffer from any infirmity or illegality and no substantial question of law as proposed by learned counsel for the appellant is made out for adjudication of this appeal. The appeal is devoid of substance and the same deserves to be dismissed at the motion stage itself and is accordingly, dismissed.

Sd/-
Dhirendra Mishra
Judge